HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 482 of 2001

Rakesh Agarwal & others ..... Revisionists

Versus

Mahant Ashok Prapanna Sharma .... Respondents

Sri Ram Ji Srivastava, Advocate for the revisionist
Sri V.K. Bisht, Sr. Advocate for the respondent.

Dated: 23.09.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

Present revision h as been field against the order dated 18.8.2001 passed by the District Judge, Tehri Garhwal.

Briefly stated decree holders Sri Hari Chand, Sri Kuldeep Chand Gupta and Himalaya Stone and Lime Company have field the execution proceedings before the District Judge, Tehri Garhwal being Execution Case No. 5 of 2000 against Mahant Ashok Prapanna Sharma praying for possession over the disputed property. The judgment debtor filed objection against the said execution application.

Mahant Ashok Prapanna Sharma has filed a suit No. 42 of 1985 for recovery of arrears of rent and possession. The suit was decreed ex parte on 6.4.1995. The defendants have moved the application under Order IX Rule 13 C.P.C. for setting aside the

ex parte order. The application was allowed and the order passed on 6.4.1995 was set aside and the suit was restored to its original number. Before setting aside the ex parte decree possession was taken by the plaintiff upon the disputed property on the ex parte decree dated 6.4.1995. Thereafter application for setting aside the ex parte decree was moved by the defendant which was allowed and ex parte decree dated 6.4.1995 was set aside but possession was not restored to the defendants. However, the suit was dismissed in default on 1.7.1996. The plaintiff has moved the application for restoration of the suit which was dismissed vide order dated 11.9.1998.

The plaintiff has preferred Civil Revision No. 190 of 2001, Mahant Ashok Prapanna Sharma vs. Rakesh Gupta & others before this Court against the order dated 11.9.1998 passed by the District Judge, Tehri Garhwal setting aside the restoration application. The Civil Revision has been dismissed in default on 19.3.2002.

Thus in view the order passed in Civil Revision No. 190 of 2001 by this Court, the executing court has no jurisdiction to go beyond the decree. The revision is, therefore, allowed.

No order as to costs.

(Rajesh Tandon J.)

23.9.2004

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